DOCUMENT RESUME

ED 333 708 EC 300 476

TITLE Free Appropriate Public Education for Students with Handicaps: Requirements under Section 504 of the Rehabilitation Act of 1973.
INSTITUTION Office for Civil Rights (ED), Washington, DC.
PUB DATE Apr 88
NOTE 9p.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Reports - Descriptive (141)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Access to Education; *Compliance (Legal); Definitions; *Disabilities; Educational Legislation; Elementary Secondary Education; Eligibility; *Federal Legislation; Free Education; *Legal Responsibility; Public Education; School Districts; Student Evaluation; Student Placement; *Student Rights
IDENTIFIERS *Rehabilitation Act 1973 (Section 504)

ABSTRACT

This pamphlet examines free appropriate public education (FAPE) requirements of Section 504 of the Rehabilitation Act of 1973 by focusing on three questions: (1) who is entitled to a free appropriate public education?; (2) how is an appropriate education defined?; and (3) how is a free education defined?. In general, all school-age children who have handicaps are entitled to FAPE. Characteristics of an appropriate education include educational services to meet individual needs, education with nonhandicapped students, nondiscriminatory evaluation and placement, and provision of due process procedures for the review of evaluation and placement decisions. Financial responsibilities of the school district include either providing an appropriate educational program or placing the student in an appropriate private program. FAPE provisions of the Education of the Handicapped Act are also briefly reviewed. (DB)

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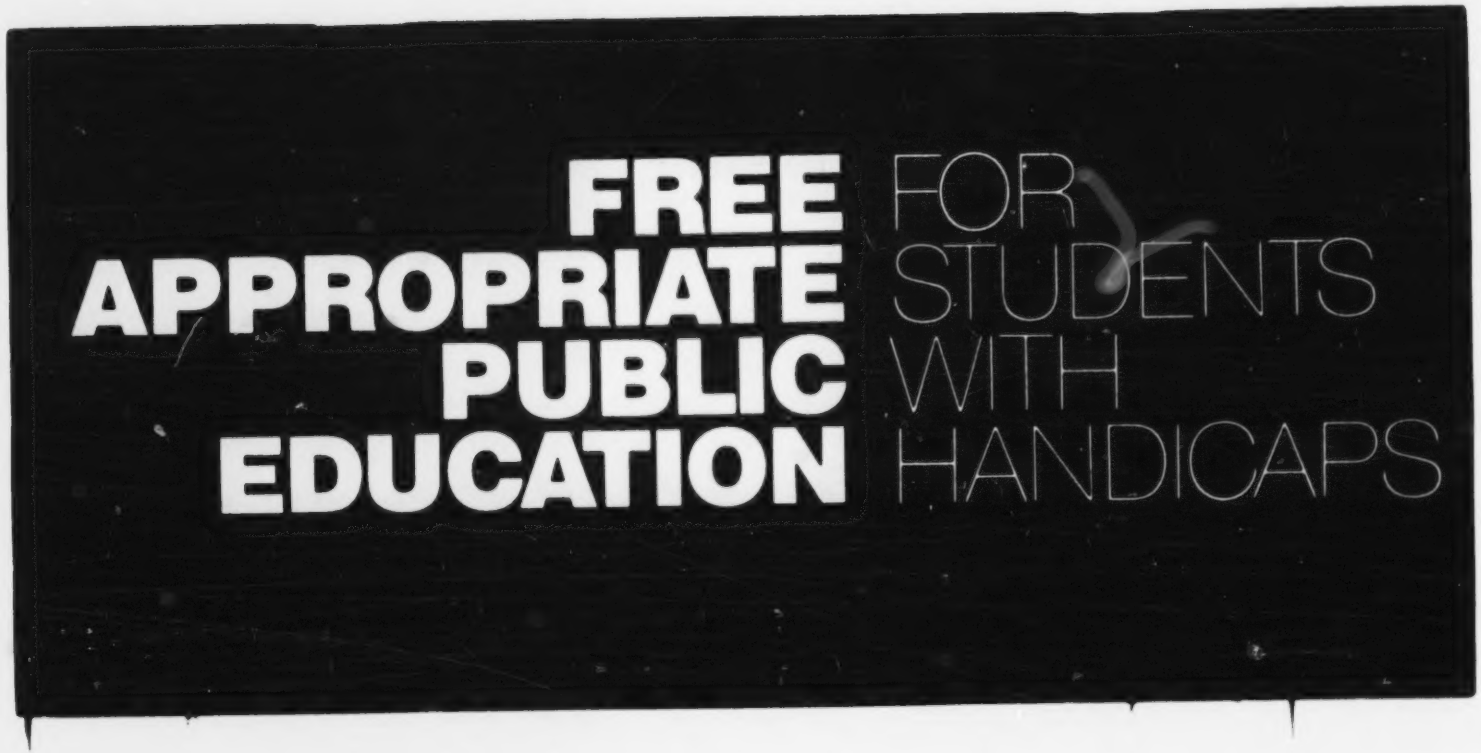

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Free Appropriate Public Education for Students with Handicaps: Requirements Under Section 504 of the Rehabilitation Act of 1973

U.S. Department of Education
Office for Civil Rights

April 1988

FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH HANDICAPS: REQUIREMENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

INTRODUCTION

Section 504 of the Rehabilitation Act of 1973 protects the rights of individuals with handicaps in programs and activities that receive Federal financial assistance. Section 504 provides that: "No otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . "[1]

The U.S. Department of Education (ED) enforces Section 504 in programs and activities that receive assistance from ED. Recipients of this assistance include public school districts, institutions of higher education, and other state and local education agencies. ED has published a regulation implementing Section 504 (34 C.F.R. Part 104), and maintains an Office for Civil Rights (OCR), with 10 regional offices and a headquarters office in Washington, D.C., to enforce Section 504 and other civil rights laws that pertain to recipients of ED funds. (The addresses and telephone numbers of the OCR regional offices are included at the back of this pamphlet.)

FREE APPROPRIATE PUBLIC EDUCATION

The Section 504 regulation requires a recipient operating federally funded special education programs to provide a "free appropriate public education" (FAPE) to each qualified person with a handicap who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

[1] Section 504 of the Rehabilitation Act of 1973, As amended, 29 U.S.C. §794.

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This pamphlet answers the following questions about FAPE:

- Who is entitled to a free appropriate public education?
- How is an appropriate education defined?
- How is a free education defined?

WHO IS ENTITLED TO FAPE?

All qualified persons with handicaps who reside in the jurisdiction of an ED recipient operating public elementary or secondary education programs are entitled to a free appropriate public education. The ED Section 504 regulation defines a "handicapped person" as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

For elementary and secondary education programs, a qualified handicapped person is a person with a handicap who is:

1. of an age during which it is mandatory under state law to provide such services to persons with handicaps;
2. of an age during which persons without handicaps are provided such services; or
3. a person for whom a state is required to provide a free appropriate public education under the Education of the Handicapped Act (EHA). (EHA is discussed later in the pamphlet.)

In general, all school age children who have handicaps are entitled to FAPE.

HOW IS AN APPROPRIATE EDUCATION DEFINED?

An appropriate education may be defined in different ways. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services in separate classrooms for all or portions of the school day. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions, and may be accompanied by such related services as speech therapy, occupational and physical therapy, and psychological counseling and medical diagnostic services necessary to the child's education.

An appropriate education will include:

1. nondiscriminatory evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education and related services;
2. educational services designed to meet the individual educational needs of handicapped students as adequately as the needs of nonhandicapped students are met;
3. the education of each handicapped student with nonhandicapped students, to the maximum extent appropriate to the needs of the student with a handicap; and
4. establishment of due process procedures that enable parents and guardians to review evaluation and placement decisions and that provide for an impartial hearing with opportunity for participation by parents and representation by counsel, and a review procedure.

Educational Services Must Meet Individual Needs

To be appropriate, educational programs for students with handicaps must be designed to meet their individual needs to the same extent that the needs of nonhandicapped students are met. An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of individuals with handicaps. For example, a blind student may be given braille materials and instruction in their use in order to participate in the regular classroom setting.

To adequately meet individual needs, academic services for students with handicaps may need

to be significantly different in character from those offered to students without handicaps. One procedure for ensuring that programs meet individual needs is the development of an individualized education program (IEP) for each handicapped student. IEPs are required for students participating in programs of recipients of funding under the Education of the Handicapped Act.

The quality of educational services provided to students with handicaps must equal that provided to nonhandicapped students. For example, the teachers of handicapped students must meet the same standards for certification that teachers of nonhandicapped students meet. Facilities must be of equal quality, and appropriate materials and equipment must be available.

Students with handicaps may not be excluded from participating in nonacademic services and extracurricular activities on the basis of handicap. Persons with handicaps must be provided an opportunity to participate in non-academic services that is equal to that provided to persons without handicaps. These services may include physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, referrals to agencies that provide assistance to persons with handicaps and employment of students.

Handicapped Students Must be Educated With Nonhandicapped Students

Handicapped and nonhandicapped students must be placed in the same setting, to the maximum extent appropriate to the educational needs of the students with handicaps. A recipient must place a person with a handicap in the regular educational environment, unless it is demonstrated by the recipient that the student's needs cannot be met satisfactorily with the use of supplementary aids and services. Students with handicaps must participate with nonhandicapped students in both academic and nonacademic services, including meals, recess, and physical education to the maximum extent appropriate to their individual needs.

As necessary, specific supplementary aids must be provided for students with handicaps to ensure an appropriate educational setting. Supplementary aids may include interpreters for deaf students, readers for blind individuals, and equipment to make physical accommodations for students with mobility impairments.

A recipient that places an individual with handicaps in a setting other than the regular educational environment is responsible for ensuring that the student receives a free appropriate public education as close to his/her home as possible.

If a recipient operates a facility for persons with handicaps, the facility and associated activities must be comparable to other facilities, services, and activities of the recipient.

Evaluation and Placement Must be Nondiscriminatory

Failure to provide handicapped persons with an appropriate education frequently occurs as a result of misclassification and inappropriate placement. It is unacceptable to base individual placement decisions on presumptions and stereotypes regarding persons with handicaps or on classes of such persons. For example, it would be a violation of the law for a recipient to adopt a policy that every hearing impaired student, regardless of the severity of the child's disability, must be placed in a state school for the deaf.

Section 504 requires the use of evaluation and placement procedures that ensure that children are not misclassified, unnecessarily labeled as handicapped, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

An individual evaluation must be conducted before any action is taken with respect to the initial placement of a child who has a handicap, or before any significant change in that placement. Recipients must establish standards and procedures for initial and continuing evaluations and

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placement decisions regarding persons who, because of handicap, need or are believed to need special education or related services. These procedures must ensure that tests and other evaluation materials:

- have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by their producer;
- include materials tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient; and
- are selected and administered so as to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Recipients must draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. All significant factors related to the learning process, including adaptive behavior, must be considered. Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.

Information from all sources must be documented and considered by a group of knowledgeable persons, and procedures must ensure that the student is placed in the most integrated setting appropriate.

Periodic reevaluation is required. This may be conducted in accordance with Part B of the EHA regulation, which requires reevaluation at three-year intervals or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation.

Recipients with Federally Funded Special Education Programs Must Have Due Process Procedures for the Review of Evaluation and Placement Decisions

Public elementary and secondary schools with federally funded special education programs must employ procedural safeguards for the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services. Parents must be told about these procedures. The procedures must allow the parents or guardians of students in elementary and secondary schools to challenge evaluation and placement procedures and decisions. In addition, parents or guardians must be notified of any evaluation or placement actions, and must be allowed to examine the student's records.

If parents or guardians disagree with the school's decisions, they must be afforded an impartial hearing, with an opportunity for participation and representation by counsel. A review procedure must be available to parents or guardians who disagree with the decision of the first hearing.

HOW IS A FREE EDUCATION DEFINED?

Recipients operating federally funded special education programs must provide necessary services free of charge to students with handicaps and their parents or guardians. Provision of a free education is the provision of educational and related services without cost to the handicapped person or his/her parents or guardians, except for fees equally imposed on nonhandicapped persons or their parents or guardians.

If a recipient is unable to provide a free appropriate public education itself, the recipient may place a person with a handicap in, or refer such person to, a program other than the one it operates. However, the recipient remains responsible for

ensuring that the education offered is an appropriate education, as defined in the law, and for coverage of financial obligations associated with the placement.

The cost of the program may include tuition and other related services, such as room and board, psychological and medical services necessary for diagnostic and evaluative purposes, and adequate transportation. Funds available from any public or private source, including insurers, may be used by the recipient to meet the requirements of FAPE.

If a student is placed in a private school because a school district cannot provide an appropriate program, the financial obligations for this placement are the responsibility of the school district. However, if a school district makes available a free appropriate public education and the student's parents or guardian choose to place the child in a private school, the school district is not required to pay for the student's education in the private school. If a recipient school district places a student with handicaps in a program that requires the student to be away from home, the recipient is responsible for the cost of room and board and nonmedical care. If the student's residential care is necessitated by the student's home condition and not by the educational needs associated with the student's handicap, the recipient is not required to pay for room and board.

To meet the requirements of FAPE, a recipient may place a student with a handicap in, or refer such student to, a program not operated by the recipient. When this occurs, the recipient must ensure that adequate transportation is provided to and from the program at no greater personal or family cost than would be incurred if a person with a handicap were placed in the recipient's program.

FAPE PROVISIONS IN THE EDUCATION OF THE HANDICAPPED ACT

The Education of Handicapped Act (EHA), administered by ED's Office of Special Education and Rehabilitative Service (OSERS), also has provisions requiring states to provide handicapped children with a free appropriate public education. The requirements for FAPE under the EHA are more detailed than those under Section 504. In specific instances detailed in the Section 504 regulation (for example, with respect to reevaluation procedures and the provision of an appropriate education), meeting the requirements of the EHA is one means of meeting the requirements of the Section 504 regulation. While EHA requirements apply only to states receiving financial assistance under the EHA, Section 504 applies to any program or activity receiving ED financial assistance. Information about EHA can be obtained by writing to OSERS at 400 Maryland Avenue, S.W., Washington, D.C. 20202. For more information about FAPE under Section 504, contact the appropriate Office for Civil Rights regional office listed at the back of this pamphlet.